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ISLAM, LEGAL GEOGRAPHY AND METHODOLOGICAL CHALLENGES IN INDONESIA

Christine Schenk

AU: The instructions in the 'notes to the copy editor' document stated that this chapter relates to local peoples language/ names/contexts, that it has already been copyedited and the style in this chapter should remain. We have retained author style but have checked for typos, style inconsistencies, and reference discrepancies.

Introduction

For much of Indonesia's post-war history, religion and especially Islam has been both a sensitive and a politically relevant topic. In the 1945 *Constitution of the Republic of Indonesia* ("Indonesian Constitution"), Islam received a *primus inter pares* status among the six officially recognised religious affiliations[1] (Effendy 2003), which served to influence the shaping of a strong Muslim judiciary in a country hosting the largest Muslim population worldwide.[2] Thus, scholars working on the juncture of Islam and state bureaucracy have highlighted the prominent role of the Muslim judiciary, the religious courts and their legal professionals. Once legal professionals are trained and have taken up positions, they become part of an administrative elite (Gade & Feener 2004; Feener 2007; Hooker 2008) with influence on administrative structures. At the same time, local, and often religious, elites seize opportunities to shape more place-based regulation of the social context vis-à-vis a national level that shapes the "politics of Islamic law" (Hussin 2016, p.15). Socio-legal matters, such as marriage, divorce, inheritance, child custody, charitable endowments under Islamic law (*waqf*) and – as in the Indonesian province Aceh – criminal law, are regulated according to Muslim precepts, both in terms of their administration and bureaucracy. In addition, there are many diverse active Muslim organisations which stimulate vibrant public debate about how to live in accordance with Islam. In consequence, any inquiry into law and its implementation will raise the question of the role of Islam and how to include it in research on socio-legal matters.

Braverman (2014, p.120) suggests in her chapter on methodology that legal geographers are by training and interest familiar with administrative and bureaucratic reasoning, government schemes and involved experts. While legal geographers are often practising experts who have become academics, their positionality

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is (still) often influenced by their previous experiences in administrative and bureaucratic work. Positionality relates to the researcher's social, cultural and subjective positions (and other psychological processes) which are reflected in the kinds of questions asked, theoretical framings, reading of texts and relations between different persons involved in the research (England 2016). Building on the requests by Braverman (2014, p.120f) and Bennett and Layard (2015) to situate the legal geography project when crafting a methodology, this chapter focuses on *why* it is important to pay attention to Indonesia's main religious affiliation – Islam and the Muslim judiciary – and the implications of such a focus for developing a research design.

To respond to this request, this chapter argues that a research design to study legal geographies in Indonesia needs to engage specifically with the Muslim judiciary and the "politics of Islamic law" (Hussin 2016, p.15). Indonesia's "politics of Islamic law" is grounded in its inter-legality "constituted by different legal spaces operating simultaneously on different scales and from different interpretive standpoints" (De Sousa Santos 1987, p.288; see also Benda-Beckmann & Benda-Beckmann 2014). In Indonesia, inter-legality emerges from the co-existence of customary law (*adat*) and formalised religious law. While customary law is often considered as a kind of place-based regulation of social matters (Bowen 2003), religious law or Islamic law is subject to negotiation between colonial, post-colonial, religious and local elites as they struggle for the codification of particular readings of Islam into law and its implementation. I examine which readings of Islamic law based on different schools of religious thought are applied in practice. My focus is on how such considerations are reflected in publicly accessible documentation and legal expertise, in order to understand the socio-politically spatialised struggles in the legal arena that aim to regulate communities and its inhabitants.

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In what follows in the first section, I highlight the historical roots of Indonesia's legal pluralism. From roughly the tenth to the twentieth century CE, the dominant denomination in Indonesia, Sunni Muslims, in principal agreed upon the sources and methods for formulating Islamic law (*Sharia*). Since then, Islam itself has increasingly provided concepts and guidance for processes of legal drafting and has gradually come to inform or even replace important *adat* and, as a result, has created "alternative forms of ordering, legal "grey zones", silences, areas of "non-law" … where laws fail to keep pace with life" (Robinson & Graham 2018, p.4). Such spatial-legal arrangements shaping a territorial project are particularly important with regard to geo-legality, where the security of bodies, most often female bodies, is at stake (Brickell & Cuomo 2019).

In the second section, I highlight how Islam has been institutionalised in the governance of Indonesia in various guises. Religious courts are responsible for regulating Muslim affairs nationally. Muslim leaders should be consulted by politicians and law-makers, either informally or formally, during or after legal drafting processes. Legal professionals in the judiciary have been trained in institutions and courses that focus (solely) on the application of *Sharia*. Even

though *adat* is the traditional local source of law, increasingly Muslim leaders are legitimised by *adat* itself to influence or even shape the regulation of community affairs.

In the third section, I present possibilities for ways of carrying out research where legal geography and Islam are at stake. In so doing, I build on the argument that positionality is crucial in ethically sensitive contexts and requires a collaborative research approach that includes different positionalities and thus responds to different expectations and opinions (Schenk 2013). Here I extend this argument by highlighting how engagement with the Muslim judiciary influences, and is influenced by, the researchers' and the participants' positionalities, and take account of the different positionalities of the researchers involved.

Islam and the background to Indonesia's legal pluralism

This section highlights the historical importance of Islam in relationship to Indonesia's legal pluralism based on state law, Islamic law and *adat*. These laws often exist in parallel and can result in "alternative forms of ordering, legal "grey zones", silences, areas of "non-law" … where laws fail to keep pace with life" (Benda-Beckmann & Benda-Beckmann 2014; Robinson & Graham 2018, p.4). In this chapter, the implications of this co-existent legal pluralism are examined in relation to a feminist legal geography (Brickell 2016; Brickell & Cuomo 2019) that emphasises the role of the well-being of the (female) body vis-à-vis heteronormative societal patterns.

In Western societies, law-making is often understood as a process of defining a "territorial project" (Murphy 2012, p.168) in the sense that it legitimates epistemic sovereignty and the spatial diffusion of administrative control in social fields across a bounded territory. This kind of top-down idealistic view of the state as container with clear boundaries defined by law is confronted with the messy social realities of a social space. Power is by no means concentrated in the state, particularly not in post-colonial contexts. Instead, this social space is shaped by the materialisation of power and discourse, with all their indeterminate cultural, political and historical meanings (Delaney, Ford & Blomley 2001, p.xviii). In post-colonial contexts such social space is not only shaped by fragmented administrative set-ups that diffuse aspirations to epistemic sovereignty, but also by a problematic inter-legality.

Inter-legality can be informed by the interaction of place, nationalist ideas of state rule and cultural and/or religious norms; such inter-legality is visibly present and researched in contexts with colonial legacies, but has tended to be underestimated in relation to more general forms of place-based regulation (Robinson & Graham 2018). While positive law derived from an authority such as a government often results in codified state law, it does not necessarily address all existent non-state rules regulating the social context of a place (Berman 2012).

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The importance of place-based forms of regulation has been discussed in recent publications. For example, Bartel (2018) analyses the political case of

Silent Spring (drawing on Rachel Carson's book, *Silent Spring*), highlighting the importance of place-based knowledge to develop legislation on pest control. In Cambodia, law-making for the protection of wetlands lacks not only place-based knowledge, but often excludes female perspectives, because law-making is inherently male-driven (Gillespie 2018). Both papers point to the importance of the nexus between place-based regulations and female (non-)representation. This is central to understanding the operation and interaction of legal spaces in contexts where place-based regulations not only operate informally, but also represent a parallel law legitimised though its colonial legacy and represented by (predominantly male) actors.

The parallel operation of such legal spaces becomes particularly pertinent in contexts with colonial legacies such as Indonesia, where state law, *adat* and Islamic law operate side-by-side as overlapping legal constructions. In Indonesia, *adat* occupies a unique position as legal space, often in contrast to state law on the national level. At the community level, *adat* regulates day-to-day matters, at times in opposition to the state. Bowen (2003, p.59) considers "*adat* as 'not-the-state'"; although Cammack (2007, p.148) points out that in colonial times, *adat* was considered as Dutch "*adat* law" when the regulation of inheritance was delegated to civil courts. The practice and rationale of *adat* slowly changed over the centuries to become more a matter of consensus-making situated in opposition to jurisdictions based on written texts. In more recent times, *adat* has become an instrument for proposing and developing norms and values in conformity with *Sharia* (Feener 2013). Thus, both *adat* and Islamic law could be considered as place-based regulations, because they are both legal orders that regulate community matters in relation to an understanding of "Muslimness" separate and distant from state-based constructions. The coexistence of multiple legal constructions entails different perceptions of the meanings of different laws as well as of social relations and, in this sense, "legal phenomena can be seen as constitutive of social relations, social consciousness and experiential reality" (Blomley, Ford & Delaney 2001, p.xvi). Islamic law in Indonesia, drawing on the dominant *Shafi'i* school, substantially differs from Islamic traditions in the Middle East since it has embraced the forms of social relations, social consciousness and experiential reality prevailing in Indonesia (Feener 2007, p.2f). Approaches to Islamic law itself are embedded in a framework of "discursive traditions" (Asad 1993, p.29) that considers Islamic law as dynamic and not fixed in one singular approach.[3] Drawing on comparative research in India, Malaysia and Egypt, Hussin (2016) challenges the point of view that colonial regimes have imposed their vision of law and instead argues for a focus on the role of politics in shaping Islamic law. Such politics are shaped by local and colonial elites, where local elites often allied with colonial power-holders to realise their vision of society and state (Hussin 2016, p.15). In relation to Indonesia, law-making needs to be considered as a phenomenon in which Muslim representation on all administrative levels is important.

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Scholars of Islamic studies focusing on Indonesia (e.g. Feener 2007; Van Bruinessen 2013) differentiate between two main streams or schools of religious

thought, namely the traditionalist and modernist (or reformist). A rather traditionalist interpretation of Islam is called *dayah*. Representatives of this school are predominantly represented in traditional religious education systems such as boarding schools (*pesantren*) focusing on Islamic legal texts in line with the reinterpretation of two main sources of Islam (*Qu'ran and Sunnah*). This traditionalist interpretation also involves tolerance towards cultural expressions, such as Sufism. The other influential school of religious thought has been identified as the "modernist". This school subscribes to modern learning as a way of enhancing the power of reason. However, it is also related to reform-minded ideas in line with Indonesia's state-based Islam that focuses on the institutionalisation of Islam in government institutions such as the judiciary, the civil service and schools.

Two developments supported the role of Islamic law in the state bureaucracy. First, the *Religious Judicature Act 1989* (Indonesia) strengthened the jurisdiction of the Islamic judiciary while making civil courts responsible for non-Muslim family management. Second, in 1991 Haji Mohamed Suharto, then President of Indonesia, promulgated the *Compilation of Islamic Laws* (*Kompilasi Hukum Islam*) (KHI) " an Indonesian-language Manual of rules covering marriage, divorce, inheritance, and charitable foundations" (Cammack 1999, p.15) that had been enforced through presidential decree. Through this compilation, and despite counter drafts to amend it (Mulia & Cammack 2007), Islamic law was adopted into state law. The KHI can be considered as a form of Islamic modernism (Esposito 1998): "Modernism's invitation to reinterpret the revealed sources in light of contemporary needs opens the possibility of clothing the requirements of the statute with the authority of the divine law" (Cammack 1999, p.18). The need for this modernisation arose because Islamic texts are so diverse and there was no systematic reference to indicate which text applies to contemporary needs.

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The implications of the legal pluralism resulting from entwinement of *adat*, different interpretations of Islamic law and state law (Geertz 1971; Brickell & Platt 2015), resonate with feminist legal geographies (Brickell & Cuomo 2019) that investigate the bodily connotations of law. Researchers working on Indonesia have analysed the consequences of such legal pluralism and its potential injustices in relation to children and women in legal regimes relating to marriage and divorce (Butt 2008; O'Shaughnessy 2008; Bedner & Van Huis 2010), sexual identities (Blackwood 2005) and the counter-agency of women's groups (Aisyah & Parker 2014; Eidhamar 2017) resisting patriarchal readings of Islamic texts (Van Doorn-Harder 2006). Questions around maintenance, child custody and domestic violence, often related to unregistered marriages (Nurlaelawati 2010; Nurlaelawati 2016), remain unresolved, and the consequences are often inscribed on female bodies – physically, mentally and economically (Schenk 2019).

In these examples, legal pluralism provides the ground for a "normative vacuum" (Griffiths 1986, p.34) in which legal interpretation is derived from diverse sources, but is far from being definite and might not provide security to all "bodies that make territory" (Smith 2012). Farries and Sturm (2018) showed

that cyber-misogyny on the internet can prevail notwithstanding that safety for women and children is guaranteed in writing, but not in the everyday digital sphere where women and children can become objects of oppression. Such oppression can be also understood as "rule *by* law", while "rule *of* law" refers to a system of rights and responsibilities (Brickell 2016, emphasis in original). Butler's classic book *Gender Trouble* (2002, p.183ff) challenges the notion of a law that intends to establish security for everyone. Rather, Butler asks what kind of security law any law establishes, along with who might benefit from this notion of security, who might be excluded and who was involved in crafting the law.

In this section, it can thus be seen that Indonesia's legal pluralism is far from being a coherent territorial project. *Adat* as customary law regulating community matters often functions in parallel with state law and increasingly incorporates Islamic law with its inherent heteronormativity, often along the aim of securing the biological reproduction of the population. On the level of national law, both civil law and the KHI add to the plethora of legal orders. The co-existence of these plural legal orders creates a normative vacuum that often has dire consequences for those who are most vulnerable, such as women and children. In the next section I analyse the institutionalisation of Islam not only in laws, but also in the state administration and bureaucracy, including the role of the Muslim judiciary, and the inherent heteronormativity and masculinity of law-making.

Role of the Muslim judiciary in shaping the legal geography of Indonesia

Islam-inspired statecraft in Indonesia became particularly controversial in Indonesia's move away from colonial Netherlands. The draft preamble of the *Jakarta Charter* (1945) included one of its purposes as being: "to carry out Islamic law for adherents of Islam". Although this clause was removed from the final draft of the Indonesian Constitution (18 August 1945), "the Islamic and nationalist leaders agreed on a secular constitution based on five principles" (*Pancasila*), the first of which was "the belief in one God" (2008, p.6). This principle was seen as a reference to Islamic law, but not to the creation of an Islamic state (Hooker 2003, p.38). This struggle around the role of Islamic law set the scene for the legitimacy of Islam in Indonesia's jurisdiction and has continued to shape the question of how to institutionalise Islam in the state management of Indonesia and thus increasing the sovereignty of Islamic law in Indonesia's inter-legality. This question is examined here by critically discussing the role of the Muslim judiciary and their increasing influence on law-making and examining the judiciary's importance in matters related to the strong role of Islam in regulating the communities of Indonesia. In so doing, this examination will also highlight the role of legal professionalism and its inherent masculinity, and emphasise the importance of influences from neighbouring countries such as Malaysia.

The Islamic courts constitute the backbone of the Muslim judiciary (Cammack 2007; Nurlaelawati 2010). In colonial times the small number of these courts was

alleged to be due to Dutch hostility to Islam. However, their number, spatial distribution across the islands and the extent of their juridical power slowly expanded and then increased rapidly after Independence (Cammack 2007). In response to clashes over the Indonesian Constitution, nationalist-minded groups advocated a largely secular Indonesian Constitution, while Muslim voices aimed for Islamic law to be included in political rule and statecraft (Hooker 2003). The Ministry for Religion, created in 1946 (Hooker 2003; Hooker 2008), was entrusted with the supervision of the Islamic courts (responsible for issuing divorces and their registration). The Office for Religious Affairs (*Kantor Urusan Agama*) (KUA) was responsible for the registration of marriages. The Ministry of Home Affairs and its subsidiaries were given the task of registering non-Muslims and managing their family matters (Nurlaelawati 2010; Schenk 2018; Schenk 2019).

The institutionalisation of Islam in law is supported by a pluralistic group of contributors including Muslim political parties and Muslim mass organisations, of which two groups, the *Muhammadiya* and the *Nahdlatul Ulama* (NU), are the best known (Van Bruinessen 2013). The shorthand dichotomy between "modernist" and "reformist" schools of religious thought can be applied here: *ulama* (or the established scholars) that are members of *Muhammadiya*, are considered modernist, while the *ulama* of the NU are characterised as subscribing to traditionalist ideas (Van Bruinessen 2013). Fealy and Bush (2014) argue that the NU *ulama* have significantly influenced national public debates since their inception in 1926, and especially after Indonesia's Independence. The NU and *Muhammadiyah* are only two organisations in a vibrant field of civil society organisations that are members of the *Majelis Ulama Indonesia* (MUI) or the Council of Islamic Scholars. The MUI is an umbrella organisation that functions as an interface between the government and the Islamic communities of Indonesia. While it has been given the task of developing guidelines for the government regarding Islamic life, it also informs the public on Islamic life through the provision of legal advice (*fatwa)* (Hasyim 2015). These forms of legal advice have impressive outreach because they are issued by influential Muslim leaders, and those by the MUI are particularly significant (Gillespie 2007). Depending on the educational background of the elected members of the MUI, opinions can be controversial because they can range from liberal to conservative readings of Islam (Hasyim 2015).

The training of legal professionals is another field that highlights the institutionalisation of Islam in the Muslim judiciary. The manner in which jurists who are specialised in Islamic law are trained often differs significantly from the training of classical jurists (Lombardi & Feener 2012). These jurists, especially those representing litigants, are often trained to provide legal advice in line with *Sharia* interpretations rather than positive civil law. In addition, judges in *Sharia* courts might have received a specific form of training in *Sharia*, and might adopt such specific interpretations of *Sharia* in their judgments. Of the manifold options possible in *Sharia*, the challenge is to decide which reading applies in any given case. The interpretation of *Sharia* also depends on the institution where

jurists specialised in Islamic law, especially judges, obtain training (Lombardi & Feener 2012, p.12).

Many legal professionals working in Indonesia have been trained in Malaysia, for instance, at the International Islamic University Malaysia. Mohamad (2013) argues that the bureaucratisation of Islam has triggered a homogenisation of Islam, based on an official and codified definition of specific behavioural norms for Muslims. The influence of such training has thus served to provide a template for the spread of a more homogenised form of Islam (that is, Muslim rule *by* law), which is observable in Malaysia's neighbouring countries such as Indonesia. Similarly, the application of Islamic law by Indonesia's state administration and bureaucracy is heavily influenced by both the curricula and political intentions of the training centres, where legal professionalism is shaped (Feener 2007; Feener 2012). From this it can be seen that it is important to engage with the background, training, intellectual assumptions and work experience of judges and lawyers in order to understand the "politics of Islamic law" (Hussin 2016, p.15). Consequently, it is also important to acknowledge that administrative levels don't necessarily correlate with spatial scales.

This discussion has analysed the important role of Islam in the Indonesian Constitution and how it translates into Indonesia's administration and bureaucracy which, although officially referring to a secular constitution, is informally influenced by a form of Islam-inspired state management. This aspect of Indonesian constitutional law thus strengthens the role of Islamic law in Indonesia's inter-legality. Furthermore, the influential role of the legal professional training of Indonesia's administration and bureaucracy in neighbouring Muslim-majority countries (and other such scholarly exchanges on the interpretation of Islamic law) places Indonesia within a wider transnational Islamic legal realm. Some of these approaches to Islamic law may serve to challenge a focus on individual rights and responsibilities, regardless of any religious affiliation, instead of emphasising the sovereignty of the *Sharia* that regulates individuals of the Muslim community (*ummah*). The next section will consider some of the methodological challenges arising from these conditions.

The "hows" and "whats" of Islam in designing research on legal geography in Indonesia: the role of positionality and collaborative research

In this section, suggestions are made for how to consider the role of Islam and its proponents in research design drawing on the concept of positionality. Positionality is important in any fieldwork because it frames the social, cultural and political ways of approaching, conducting and writing about research (Rose 1997; Mohammad 2001; Franks 2002; Sultana 2007). In settings where social and cultural differences are at stake, and where fieldwork is informed by "ask[ing] how people live, constitute, and imagine social space, place and landscape as well as how people understand themselves as living, doing and imagining the legal"

(Braverman 2014, p.124), the positionality of the researcher plays a crucial part in becoming a "spatial detective" (Bennett & Layard 2015) in order to understand the materialisation of law. In so doing, I reflect on insights from ethnographic fieldwork in Indonesia on the registration of marriages, and include the analysis of an expert hearing on legal reform of the registration of marriages and divorces (Schenk 2018; Schenk 2019). My research has also been subject to my own positionality as a white, non-Muslim and female academic, who is fluent in Indonesian. In the following, I situate positionality in the context of cultural and social protocols and present how I dealt with it through my organisation of the fieldwork, which included a combination of different sources or "multi-sited fieldwork" (Braverman 2014; Bennett & Layard 2015). Such multi-sited fieldwork aims to balance any positionality in a non-Western setting (Gillespie 2016, and see Chapter 2 of this collection) with different avenues of research, and seeks to both avoid relying one-sidedly on known and like-minded contacts alone, and respond to the "politics of Islamic law" (Hussin 2016, p.15)

Positionality in religious contexts has long been, and continues to be, both a sensitive and politically significant topic in Indonesia (Schenk 2013). Consequently, research on the Muslim judiciary and on the role of religion in political processes or how religion influences the course of everyday life, needs to pay attention to social and cultural expectations and protocols (e.g. the central role of the family unit in society). It raises the question of who can legitimately ask questions and carry out research on such politically sensitive topics. "Critical" questions challenging different normative expectations and protocols might upset research participants and lead to heightened emotions. These heightened emotions or even hostility can result in the researcher not being able to continue with the interview or, indeed, the whole research project. Even the fact that a researcher comes from the West can lead to their being perceived as meddling in national affairs and evoke hostile reactions (Jones & Ficklin 2012; Gillespie 2016). There are two issues relating to positionality that I would like to explore here: the dual identity of a researcher, and the cultural and political restrictions on the research itself.

The first is the dual identity of being both "an expert" with, for example, expertise in legal issues, and being an academic and/or an activist. Being both can allow access to the different perspectives of those working in different positions and organisational backgrounds in "living, doing and imagining the legal" (Braverman 2014, p.124) and might also produce discussions in which the researcher turns into an expert and vice-versa. If the researcher is considered as an expert s/he turns into a respondent, or potential source for, providing expertise on the research participant's inquiry. The researcher can turn into an authority providing advice instead of researching the social context informing legal problems.

The second aspect of the issue of positionality refers to the potential cultural and political restrictions in the field, especially if research participants consider the researcher as an intruder into their affairs and are emotionally opposed to the

research. Jones and Ficklin (2012) argue that trust is essential in establishing types of relational fieldwork. To address these restrictions, the researcher and research participants must develop some form of social relationship. Building on such relational fieldwork, Brigg and Bleiker (2010) examine the importance of the self as producer of knowledge in interaction with knowledge communities. Relational fieldwork does not just start with empathy, for instance by saying "I like Acehnese food" or any other appreciative, but largely superficial, comments. Rather, it starts with "a recognition of the importance of the 'position' or 'positionality' of the researcher: that we see the world from specific embodied locations" (Rose 1997; Valentine 2002, pp.116–17). Thus, recognising one's own educational background, origin, gender difference and being aware of different perceptions of the role of religion in shaping (or not shaping) everyday life has proven important to me when carrying out research. Such recognition avoids reproducing "the illusion of sameness" (Valentine 2002, p.123) between researcher and participants and, instead, incorporates one's positionality into fieldwork.

In my research on the registration of marriages and divorces, I "studied up" power relations in bureaucratic organisations and legislative processes. To "study up" involves an ethnographic approach that focuses not only on disadvantaged actor groups, but connects the inquiry to the power structures of elites (Mukherjee 2017). Local and national elites often are key in shaping legislative processes. Most of my fieldwork starts with the following questions: "What genuine interests can I share with my research respondent/s?"; and "How does this help me to develop positive relationships or even empathy with research participants?". Empathy "refers to the capacity to understand the experiential frame of reference of another without losing an awareness of (its difference from) one's own" (Bondi 2003, p.65). From these questions, various further avenues can develop such as exploring the self as a source of knowledge (Brigg & Bleiker 2010), which might involve articulating one's own emotions within the research setting. This notion is relevant to a situation during my research where I used my role as a mother to establish trust between myself as researcher and some of my participants. At the same time, I pondered the issues of family management with my colleagues, which aims to link the personal to research work (Moser 2008). Moser (2008, p.383) describes how one's personality responds to aspects of research, "such as my social skills, my emotional responses to, and interest in, local events, how I conducted myself and the manner in which I navigated the personalities of others". These social skills support the research process and have a positive impact on the insights being shared, but also assign more weight to the researcher's interaction with the research participant.

However, during my fieldwork I faced situations that required me to think of and craft alternative avenues for research. One avenue involved swapping roles with Muslim co-researcher(s), who were able to contribute Islamic idioms and ideas to the discussions with participants, which served as icebreakers for establishing research relationships. Such practice proved particularly important when engaging with persons with an elite background. However, the practice of "studying-up"

elites can uncover questions other than the research question, as persons with such a background might feel inspired by hearing themselves talk (Braverman 2014, p.125). I often experienced this kind of self-indulgence with experts who used me and my co-researcher(s) as "good listeners". Quite often, the resulting flow of words could hardly be interrupted, and this made me think about the types of multi-sited fieldwork that take place in the archives of parliamentary services, court rooms, offices of lawyers, mosques, help centres for vulnerable persons, administrative offices and private houses. The ability to research a diversity of locations and places and forms of regulations tailored to different local contexts is important in addressing the conundrum of "politics of Islamic law" (Hussin 2016, p.15).

In my interviews, I inquired about the most contentious issues such as the registration of marriages and the codification of polygamy in law-making and how they relate to particular justifications present in Islamic and religious perspectives. I identified "signifiers" (Dixon 2010, p.393): for example, proposing to issue a *fatwa* can be a signifier for ambitions to actively shape the regulation of a Muslim society. In order to understand how a research participant framed her/his ideas on a *fatwa*, I asked questions to uncover where the research participant had received legal training and whether the research participant subscribes to a modernist or traditionalist school of religious thought. These lines of questioning enabled me to find out their points of view on drafting law and the role of Islamic teachings within the law. In parallel, I conducted interviews with Muslim leaders to help me understand religious justifications and underlying rationales for the exercise of Muslim leadership.

One way I balanced the like-mindedness of research participants was to analyse "expert hearings" of legal processes. In Indonesia, these sources can be accessed upon application to the Parliamentary Information Service or similar public services. In order to analyse the different positions on the registration of marriages and divorces, I examined the *Expert Hearing on the by-law on population administration of the Province of Aceh*, conducted between March and June 2008 and recorded in verbatim reports in Indonesian (Schenk 2019). These hearings documented the statements made during the legal reform comprising civil servants from different governmental institutions (religious courts, civil registration, Office for Religious Affairs), legal experts, lawyers representing women's organisations and Muslim leaders. Since most of the participants in the hearings were important figures in Acehnese society, their backgrounds and importance could serve as bases for more detailed interviews. But such research is not adequate on its own and needs to be complemented with accounts of persons experiencing the lack of individual rights or its implementation.

This section has discussed how selected methods and diverse research sites relate to furthering an understanding of the role of the judiciary. A researcher's (Western) positionality will require taking into account cultural and political expectations and protocols. Besides a collaborative research approach, I have presented various techniques of multi-sited fieldwork to deal with these expectations and protocols, while paying particular attention to the Muslim judiciary, for example through research methods including the analysis of verbatim reports

such as expert hearings. Developing signifiers and asking where research participants have received their legal training can clarify how state law is informed by particular schools of religious thought.

Conclusion

This chapter has examined the role of Islam in shaping Indonesia's legal geography and has considered ways of studying such complex conditions. Due to the Indonesian Constitution, Islamic law has a strategic role in shaping a judiciary divided by religious affiliations (Muslim and non-Muslim administration and bureaucracy). Besides Islamic law, Indonesia's legal pluralism comprises both customary law (*adat*) and forms of positive law that are not constitutive of the place-based regulations underpinning social practices prevailing in villages across Indonesia – and vice versa. The gap between place-based regulations and codified law particularly affects the regulation of family matters such as divorces, maintenance and the payment of alimony. Women and children often depend on the legal interpretation and jurisdiction of the judge if legal justice at the religious courts aiming to regulate rights and responsibilities of "bodies that make territory" (Smith 2012). In turn, one can say that the role of the Muslim judiciary, its local and national elites, is important to any understanding of the rationale underlying social processes, their legislation and jurisdictions in shaping the politics of Islamic law that forms part of the multi-legal territorial project of post-colonial Indonesia.

AU: The meaning of the sentence beginning 'Women and children…'is unclear. Please consider revising for clarity.

In order to understand the rationale of the Muslim judiciary, this chapter has argued for a comprehensive and explorative engagement with the politics of Islam. In so doing, I have highlighted the role of the researcher's positionality, which may confront boundaries if some topics cannot be voiced due to the researcher's gender and, possibly, Western origin. To address positionality, I have highlighted the importance of a collaborative research team involving different origins and genders. However, to approach groups facing severe injustices, multiple research approaches are necessary involving fieldwork in different places and through mixed methods. In addition, the analysis of public records, such as those of expert hearings, can provide insights into important societal discourses. I have briefly explained the application of signifiers that can help to identify which reading of Islamic law, including which school of religious thought and its sub-denominations, has most influenced members of the Muslim judiciary. These signifiers draw on questions asking where research participants received their training because legal professionalism both influences the exercise of jurisdiction and shapes the translation of social processes into codified law.

Notes

1 Islam, Protestantism, Catholicism, Hinduism, Buddhism *and* Confucianism. The author is aware that Protestantism and Catholicism are different branches of Christianity.

2 Approximately 88% (39Government of Indonesia 2010) of Indonesia's population (app. 264 Mio., Worldbank 2017) are Muslim adherents.
3 Islamic law is here referred to as *fiqh* or Islamic jurisprudence, while being aware that the term *Sharia* comprises both *Sharia* as way of life and *fiqh* (Hallaq 2001; Hallaq 2009).

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